

Remarks

Claims 1-28 are currently pending and stand rejected. By way of the foregoing amendment, claims 1, 4-6, 8-10, 13, 14, 19-24, 26, and 27 are amended; claims 2, 3, 7, 11 and 12 are canceled; and new claims 28-31 are added.

Interview Summary

On December 14, 2005, the Examiner and the Applicant's representative participated in an interview to discuss all pending claims of record, claims 1-28. Proposed claim amendments were discussed, including recitation of the elements of the table cover being formed of a polymer film, and pre-fitted or pre-formed corners of the table cover, that hold the table cover on the table, which are not taught or suggested by the cited references.

Specification

The Examiner has objected to the language and format of the Abstract, particular to the use of the term "invention" therein. Applicant herein has amended the Abstract to correct the language and place the Abstract in proper form.

Claim Rejections - §112, ¶2

The Examiner has rejected claims 9, 10 and 13 under 35 U.S.C. §112, ¶2 as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Specially, the Examiner states it is unclear within these claims whether the Applicant intends to claim a combination table and table cover as there is specific interconnection with a table, such as when reciting dimensions. Applicant has amended claims 9 and new claim 28 (which depends from claim 10) to recite clear dimensions. In claims 13 and 20, the language "and sized a little smaller than the top surface of the tabletop" has been removed. Applicant respectfully asserts that the Examiner's rejections are overcome by these amendments.

Claim Rejections 35 U.S.C. §103(a) - Bendelari

The Examiner has rejected claims 1- 7, 9-14, and 20-23 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 1,926,429 to Bendelari. Applicant respectfully disagrees for the following reasons.

Bendelari addresses a woven, fabric cover for rectangular shaped furniture. (Bendelari p. 1, lines 1-4.) Bendelari notes the problem in the art that table covers are made for particularly sized tables are not adaptable for use with another table of different dimension. (*Id.* at p. 1, lines 61-64) To overcome this, Bendelari requires that the fabric cover be made of rubber threads interwoven with cotton, in order for the fabric cover to have substantial elasticity in both length and width such that it can grip around and underneath the sides of the table top, and overcome this problem in the art. (*Id.* at p. 1, lines 75-78 & 100-103; Fig. 3; p. 2, lines 9-14.) Thus, Bendelari's cover does not drop along the sides of the table, but rather extends down and inwardly around the sides to grip underneath the sides of the table (by means of "side skirt portions 5"), and thus does not extend downwardly to a free edge. (*Id.* at Fig. 3; p. 2, lines 9-14 & 28-30.) Bendelari's elastic construction, which allows the cover to extend inwardly to grip underneath the sides of the table is required in order for it to be "adaptable for use as a cover for table tops of varying sizes." (*Id.* at p. 2, lines 33-35.)

With respect to the Applicant's invention, there is a clear structural difference from the disclosure in Bendelari. As amended herein, all of Applicant's claims require a table cover that has a top cover and a plurality of side drops extending outwardly from the sides of the top cover and being adapted to be folded over the sides of the tabletop and to extend downwardly to a free edge. (See independent claims 1, 13, 14, 20, 23, 24, as amended herein.) The side drops of Applicant's table cover, thus, extend downwardly along the sides in a general vertical direction to a free edge, in contrast to Bendelari's

skirt portions of the table cover which grip around the sides and horizontally beneath the tabletop.

Moreover, all of Applicant's claims require the element of a polymer film, a polymer inherently being a continuous, uniform material made up of a single, repeated structural unit, which is employed in the present invention as a thin layer for covering a table. (See independent claims 1, 13, 14, 20, 23, and 24 as amended herein; Application at ¶[0038].) Additionally, Applicant's invention is formed to cover a tabletop of a conventional, pre-determined size (see independent claims 1, 13, 20 23, 24; Application at ¶¶[0039]-[0043]), such as standard-sized trade show tables (see independent claims 13-14, 20, 23, and 24). Additionally, Applicant's invention requires pre-fitted corners formed by joining two adjacent side drop portions to fit the polymeric film cover upon the trade show table and to hold it thereupon. (See independent claims 1, 13, 14, 20 23, 24; Application at ¶¶[0020]&[0058].) Further, Applicant's claims 19, 26, 27, 30 and 31 additionally recite the elements of the table cover being removable and disposable. Bendelari fails to disclose each of these required claim elements.

In fact, Bendelari teaches away from Applicant's aforementioned claim elements. Bendelari's woven fabric cover includes rubber which makes it elastic, allowing it to grip around and underneath the side edges, in order to stay upon the table. (See Bendelari at Fig. 3, p. 2, lines 11-14.) Bendelari relies on this elasticity to retain the fabric cover on the table and to be later stretched and removed for re-use on table tops and furniture (e.g. mattresses) of varying sizes. (*Id.* at. p. 2, lines 31-88.). Bendelari teaches away from a table cover having side drops extending outwardly from the top cover, folding over the sides of the tabletop and then extending downwardly to a free edge. Bendelari relies on elasticity to hold the cover on and grip furniture of varying sizes, and teaches away from pre-fitted corners to fit the polymeric film cover about the table and hold the cover on the table, such as required by Applicant's claims. Bendelari does not disclose forming a cover of polymeric material to fit a table of pre-determined size such as a

tradeshow table, as required by Applicant's claims, and in fact, oppositely teaches use of an elasticized fabric cover to achieve adaptability to tables of varying dimensions.

Further, Bendelari highlights the importance of the fabric cover being re-usable which teaches away from Applicant's claims which include the element of disposing of the table cover after use at a trade show, and additionally, then placing a new table cover upon the table when needed for the next trade show. (See claims 19, 26, 27, 30 and 31.)

For at least these reasons, Applicant's claims are not taught or suggested by Bendelari. Applicant respectfully asserts that the Examiner's rejection has been overcome.

Claim Rejections 35 U.S.C. §103(a) – Bendelari in view of Berman

The Examiner has rejected claim 8 under 35 U.S.C. §103(a) as being unpatentable over Bendelari and further in view of U.S. Patent No. 3,557,856 to Berman. Applicant respectfully disagrees for the following reasons.

As discussed above, Bendelari alone fails to teach or suggest all elements of Applicant's claim 8 including a cover made of polymer film, specifically vinyl, formed to cover a tabletop of pre-determined size, and having side drops extending downwardly to a free edge, and pre-formed corners to hold the polymeric film cover upon the trade show table. Likewise, Berman fails to disclose these elements and remedy the defects in Bendelari to arrive at the present invention.

Berman discloses use of "adjustable snap corners" such that the table cover can "fit over tables of different sizes." See Berman, col. 2, lines 20-22, 40-41. By adapting the cover to tables of different sizes, Berman, like Bendelari, teaches away from a table cover formed of polymeric film (specifically in claim 8, vinyl), having side drops

extending downwardly to a free edge, and having pre-formed corners to cover a table of pre-determined size and hold the cover thereon, as required by claim 8.

Specifically, the Examiner cites Berman for teaching use of vinyl material and suggests incorporating it into Bendelari to arrive at Applicant's claim 8. Applicant respectfully disagrees for the following reasons.

Berman, in fact, does not disclose a table cover made of vinyl, but rather fabric. Berman discloses pockets extending down from the poker table cover to visibly hold player's belongings. (*Id.* at col. 2, lines 15-19). Each pocket has a front and back portion, the front pockets formed of a transparent *plastic* material, and thus, the contents therein are visible; and the back portion formed of fabric. (*Id.* at col. 1, lines 29-31; col. 2, line 6). Berman also states that the back portion of the pockets (i.e. fabric) is made of the same material as the cover. (*Id.* at col.2, line 2-3.) Hence, Berman, in fact, discloses a cover made of fabric and only pockets made of vinyl.

Moreover, even if, *arguendo*, Berman discloses a vinyl table cover, there is no suggestion or motivation in either of the references to combine Berman with Bendelari. As previously discussed, Bendelari requires use of an elasticized fabric cover, and incorporating a vinyl, a non-elasticized material, into Bendelari's cover is not suggested and further would result in Bendelari as not functioning as an elasticized cover as it is intended to in the disclosure. While vinyl may, to some degree, inherently be stretched out as a result of pulling, it is not elastic, i.e. capable of stretching and then contracting back to its original shape, like the elasticized fabric employed in Bendelari.

For at least these reasons, Applicant's claim 8 is patentable over Bendelari in view of Berman. Applicant respectfully asserts that the Examiner's rejection has been overcome.

Claim Rejections 35 U.S.C. §103(a) – Bendelari in view of Hairston

The Examiner has rejected claims 15-19 and 24-28 under 35 U.S.C. §103(a) as being unpatentable over Bendelari and further in view of U.S. Patent No. 5,778,802 to Hairston. Specifically, the Examiner cites Hairston for disclosing a skirt attached to a table cover and states that it would have been obvious to one of skill in the art at the time of the invention to modify the structure in Bendelari to include a skirt as taught by Harrison. Applicant respectfully disagrees for the following reasons.

As discussed above, Bendelari alone fails to teach or suggest all elements of Applicant's claims 15-19 and 24-28, including a cover formed of polymer film to cover a tabletop of pre-determined size, such as a trade show table, having side drops extending downwardly to a free edge and having pre-fitted corners to fit and hold the polymeric film cover upon the trade table. Likewise, Hairston fails to disclose these elements and remedy the defects in Bendelari to arrive at the present invention.

For at least these reasons, Applicant's claims 15-19 and 24-28 are patentable over Bendelari in view of Hairston. Applicant respectfully asserts that the Examiner's rejection has been overcome

Evidence of Commercial Success

In the consideration and determination of obviousness under 35 U.S.C. §103, four factual inquiries must be addressed: (A) Determining the scope and contents of the prior art; (B) Ascertaining the differences between the prior art and the claims in issue; (C) Resolving the level of ordinary skill in the pertinent art; and (D) Evaluating evidence of secondary considerations. *Graham v. John Deere*, 383 U.S. 1, 148 USPQ 459 (1966). Objective evidence or secondary considerations such as unexpected results, commercial success, long-felt need, failure of others, copying by others, licensing, and

skepticism of experts are relevant to the issue of obviousness, and when submitted, must be considered by the Examiner. See MPEP 2141; *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983); *Hybritech, Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 231 USPQ 81 (Fed. Cir. 1986), *cert. denied*, 480 U.S. 947 (1987).

Evidence of secondary considerations must be relevant to the subject matter as claimed, and therefore, there must exist a nexus between the merits of the claimed invention and the evidence of secondary considerations in order to give them substantial weight in the determination of nonobviousness. *Ashland Oil, Inc. v. Delta Resins & Refractories, Inc.*, 776 F.2d 281, 305 n.42, 227 USPQ 657, 673-674 n. 42 (Fed. Cir. 1985), *cert. denied*, 475 U.S. 1017 (1986). The term "nexus" designates a factually and legally sufficient connection between the objective evidence of nonobviousness and the claimed invention so that the evidence is of probative value in the determination of nonobviousness. *Demaco Corp. v. F. Von Langsdorff Licensing Ltd.*, 851 F.2d 1387, 7 USPQ2d 1222 (Fed. Cir.), *cert. denied*, 488 U.S. 956 (1988). See MPEP 716.01(b). Further, the objective evidence of commercial success asserted to show nonobviousness must be commensurate in scope with the claims. *In re Tiffin*, 448 F.2d 791, 171 USPQ 294 (CCPA 1971)

Submitted herewith is an Affidavit of Commercial Success Pursuant to 37 CFR 1.132 with respect to Applicant's invention, submitted by Larry Edinger, President of SMT Solutions, Inc., the assignee of the present application (hereinafter referred to as "Edinger Aff.").

Generally, in the tradeshow and exhibition industry in the United States and Canada, tables used for display are rented to vendors and exhibitors in uniform sizes and dimensions: typically, 4', 6' or 8' in length and 24" or 30" in width. (Edinger Aff. ¶3.) Prior to use of the product embodying the claims of the present invention, decorating contractors that set-up these exhibitions and trade show events used a standard procedure to set-up these tables to have a vinyl cover and skirt around all four sides,

achieved by the following steps. (Edinger Aff.¶4.) Vinyl is cut-off of a large fifty pound roll, with the laborer having to approximate the right length and generally over-cutting to ensure it is not too short to cover the table top. (Edinger Aff.¶4.) Laborers then staple the material around outside of the table. (Edinger Aff.¶4.) For a 6" table, it is estimated that it takes 3.5 minutes to install, which based on \$42.00 per hour labor rate of a labor cost of \$2.45, plus \$0.80 for the cost of material and \$0.13 for the cost of staples, for a total of \$3.38 to cover a 6' table, for instance. (Edinger Aff.¶¶1,4.) After use, there are additional costs involved and time spent with respect to taking down the trade show tables, including removal of the vinyl table covers. Laborers tear the vinyl from the tables with the unfortunate consequence of staples remaining at least partially in the table and protruding to cause injuries to laborers who are working to disassemble the tables. (Edinger Aff.¶5.) Further, eventually over time, the tables which are repeatedly re-used at these trade show and exhibition events, become inundated with staples and in order for them to be re-used and/or to prevent injury, a great deal of time must be spent to remove the many staples that have accumulated. (Edinger Aff.¶5.) This clearly shows that the system of covering trade show tables presently used in the industry includes inefficient use of resources and labor, and resultantly costly. (Edinger Aff.¶5.)

In attempts to save time, reduce labor and material costs, and improve overall efficiency of set-up for trade shows and exhibitions, the present invention was developed. (Edinger Aff.¶6.) The commercial product embodying the elements of the claims of the present invention are sold by our company SMT under the tradename Q-Top™. (Edinger Aff.¶9.) Specifically, the product is a pre-formed cover made of polymeric film for covering a trade show table, the cover having a top, side drops extending downwardly to a free edge, and pre-formed corner, all of which allows the table cover to be held upon the table without additional fastening steps or means. (Edinger Aff.¶¶6-7.) The covers are manufactured in pre-determined sizes, about 4', 6' and 8' in length and 24" and 30" width, to fit to the standard sized trade show tables used in the industry. (Edinger Aff.¶¶6-7.)

The pre-sizing of the table cover eliminates the labor time and costs needed in the traditional method of constructing a table cover as known in the industry, i.e. rolling out the large roll of vinyl, estimating a needed length, cutting the needed length, placing the vinyl in the table and stapling it to the sides. (Edinger Aff.¶7.) The products and methods of manufacturing and/or using the product, embodying the claims of the present application, lowers material costs by eliminating the overestimated vinyl and removing the needs for staples and stapling equipment. (Edinger Aff.¶7.) In addition to saving labor and resources during set-up of trade show tables, the products and methods of manufacturing and/or using the product embodying the claims of the present invention results in a savings at the time of disassembling the trade show tables. (Edinger Aff.¶8.) The product is easily pulled off and removed from the table in one step and discarded. (Edinger Aff.¶8.) There is no tearing of stapled vinyl in multiple pieces and no removal of staples, saving a great deal of labor time and cost. (Edinger Aff.¶8.) Another important benefit of the products and methods embodying the claims of the pending application is the reduced amount of injuries to laborers that otherwise result from staples that protrude from the sides of the trade show tables and build-up over time. (Edinger Aff.¶10.)

The commercial product installs without measuring, cutting and stapling in less than 30 seconds and offers a substantial savings estimated to be about \$1.09 per table covering. (Edinger Aff.¶9.) These benefits have been embraced by those in the trade show decorating industry, and as a result, sales of the Q-top™ have steadily and dramatically increased since their introduction to the market. (Edinger Aff.¶¶11-12.) In their first 6 months of sales at the end of 2004, 70,000 units were sold and now Applicant projects sales for the first half of 2006 to be almost five times that amount at 325,000 units. (Edinger Aff.¶11.) The time and cost-saving beneficial features of the product, and the resulting commercial success, are the results of the pre-sized polymeric film (to fit 4", 6" or 8" long by 24" or 30" wide tables), the side drops extending downwardly to a free edge, and the pre-formed or pre-fitted corners. (Edinger Aff.¶13.)

The nexus between the merit of claimed elements and the commercial success of the product and methods embodying the claims is readily shown by way of the submitted Affidavit. Applicant respectfully asserts that that consideration of the evidence of commercial success results in a finding of nonobviousness.

Conclusion

Applicant respectfully asserts that claims 1-31 are in condition for allowance and that they pass to issue.

Respectfully submitted,

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